

**SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY**

SUBJECT: FDEP Short Form Consent Order, Proposed Settlement for Sumter County Jail (staff recommends approval)

REQUESTED ACTION: Board approval

☐ Work Session (Report Only)
☒ Regular Meeting

DATE OF MEETING: 7/12/2011

☐ Special Meeting

CONTRACT: ☐ N/A

Effective Date: _____

Managing Division / Dept: _____

Vendor/Entity: _____

Termination Date: _____

Public Works/Engineering/Facility Development

BUDGET IMPACT: \$3,050.00

☒ Annual

☐ Capital

☐ N/A

FUNDING SOURCE:

Capital Outlay Fund Revenue

EXPENDITURE ACCOUNT:

307-290-523-6507

HISTORY/FACTS/ISSUES:

A compliance inspection by Citrus County Health Department on October 2, 2009 on behalf of FDEP, revealed violations at the Sumter County Jail above ground storage tank (AST). This information was provided to the BOCC by letter on July 22, 2010 (attachment 1).

Corrective actions have been taken and now FDEP has prepared a short form consent order for the Sumter County BOCC to sign, in the amount of \$3050.00 (attachment 2). FDEP acknowledges that payment of the consent order does not constitute admission of liability.

Staff recommends the Chairman sign page 2 of the short form consent order letter.

Attachments:

1. FDEP letter dated July 22, 2010
 2. FDEP Short Form Consent Order letter dated June 14, 2011
-



Florida Department of Environmental Protection

Southwest District Office
13051 North Telecom Parkway
Temple Terrace, Florida 33637-0926

Charlie Crist
Governor

Jill Kotkamp
Lt. Governor

Michael W. Sole
Secretary

July 22, 2010

CERTIFIED MAIL

RETURN RECEIPT REQUESTED: 7009 1680 0001 0455 6400

Sumter County Board of County Commissioners
c/o Doug Conway
910 N. Main Street
Bushnell, Florida 33513

Warning Letter # 10-061-TK60SWD

**Subject: Sumter County Jail Facility
223 E. Anderson Avenue
Bushnell, Sumter County, Florida
FDEP ID# 60/9811789**

Dear Mr. Conway:

The Citrus County Health Department (County) has been authorized, by contract with the Florida Department of Environmental Protection (Department), to perform storage tank compliance inspections at facilities regulated by the Department pursuant to Chapters 62-761 and 62-762 of the Florida Administrative Code (F.A.C.).

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. The compliance inspection conducted on October 2, 2009 of the above referenced facility indicates that violations of Florida Statutes and Rules may exist at this facility. County personnel observed the following at the above referenced facility:

1. The 850-gallon Aboveground Storage Tank (AST) was not registered from the time of installation on June 24, 2009 to January 8, 2010 and fees were not paid. The 1,000-gallon AST was not registered from the time of installation on February 17, 2009 to January 8, 2010 and fees were not paid. Registration placard not clearly displayed in plain view or available during the inspection performed on October 2, 2009 and was not obtained until March 23, 2010.
2. Release detection inspections, including visual and electronic monitoring of the AST's secondary containment, were not performed and documented properly on a monthly basis from the time of installation of the 850-gallon AST on June 24, 2009 to March 29, 2010. Release detection inspections, both visual and electronic monitoring of the AST's secondary containment, were not performed and properly documented on a monthly basis

from the time of installation of the 1,000-gallon AST on February 17, 2009 to October 2, 2009.

3. The initial operability test of the 850-gallon AST rupture basin sensor and monitoring panel was not performed until March 29, 2010.
4. Notification was not provided 30 days and 48 hours prior to when the ASTs were installed.
5. Records requiring a two-year documentation period, including monthly release detection records, a written Release Detection Response Level (RDRL), and a Certificate of Financial Responsibility were not kept by facility and not submitted within five days notice.

Section 376.303, Florida Statutes (F.S.), gives the Department the power and duty to: establish rules, including but not limited to, construction standards, permitting or registration of tanks, maintenance and installation standards, removal or disposal standards, and to implement the intent of sections 376.30-376.319, F.S., and to regulate underground and aboveground facilities and their onsite integral piping systems. Further, it is a violation of section 376.302(1)(b), F.S., for any person to fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the Department pursuant to its lawful authority.

Rule 62-762.401(1)(a)-(b), F.A.C., states that the owner or operator of any facility, or the owner or operator of a storage tank system, aboveground hazardous substance tank, or compression vessel, shall register the storage tank system, aboveground hazardous substance tank, or compression vessel with the Department on Form 62-761.900(2). A completed registration form shall be submitted to the Department no later than 30 days after regulated or hazardous substances are put into any new storage tank system, above ground hazardous substance tank, or compression vessel.

Rule 62-762.401(2)(a)1-5, F.A.C., states that registration fees are due from the tank or facility owner or operator, as indicated in this section, for all registered storage tank systems and compression vessels, except for storage tank systems that have been properly closed in accordance with subsection 62-762.801(3), F.A.C. and ASTs at federally-owned or operated facilities. A registration fee of \$50.00 per tank or vessel shall be submitted for each initial registration of a storage tank system or compression vessel. The fee shall be paid within 30 days after receipt of an invoice by the Department. A renewal fee of \$25.00 per tank shall be paid to the Department for each storage tank system not meeting the closure requirements of subsection 62-762.801(3), F.A.C., by July 1 each year. A replacement fee of \$25.00 per tank shall be paid to the Department for each tank that is replaced for the purpose of facility upgrading, within 30 days after receipt of an invoice by the Department. A late fee of \$20.00 per tank shall be paid to the Department for any renewal that is received after July 31.

Rule 62-762.401(2)(a)6, F.A.C., requires that each facility must receive a registration placard upon payment of all applicable fees. The placard must be displayed in plain view in the office, kiosk, or at another suitable location at the facility where the tank is located.

Rule 62-762.451(1)(a)1, F.A.C., requires that verbal or written notice shall be provided to the County at least 30 days before installation or upgrading to meet the requirements of Rule 62-761.500, F.A.C., unless the County agrees to a shorter time period.

Rule 62-762.451(1)(a)3, F.A.C., requires that verbal or written notice shall be provided to the County at least 48 hours before initiating activities specified in subparagraphs 1. or 2. above, to confirm the date and time of the scheduled activities; before the establishment of temporary out-of-service status for field-erected ASTs; and before performing any tightness test required under this chapter.

Rule 62-762.601(1)(a)2, F.A.C., states that storage tank systems shall have a method, or combination of methods, of release detection that is installed, calibrated, operated and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability to ensure that the device is functioning as designed.

Rule 62-762.601(1)(c), F.A.C., states that a release detection method shall be established and provided for all storage tank systems upon installation.

Rule 62-762.601(1)(d), F.A.C., states that except as otherwise specified in Rules 62-762.601-.641, F.A.C., the release detection method or combination of methods used at a facility shall be performed at least once a month, but not exceeding 35 days, to determine if a release from the storage tank system has occurred.

Rule 62-762.601(1)(e), F.A.C., states that at least once a month, but not exceeding 35 days, any storage tank and component of a storage tank that can be inspected visually shall be visually inspected in accordance with paragraph 62-762.641(2)(e), F.A.C. A visual inspection is not required for any system component that has a continuous or monthly electronic release detection sensor. Continuous electronic leak detection devices shall be inspected for proper operation on a monthly basis. Inspection may consist of visual observation or remote verification of proper operation.

Rule 62-762.601(1)(h), F.A.C., states that any component of a storage tank system with secondary containment shall have an interstitial monitoring method meeting the requirements of paragraph 62-762.641(3)(a), F.A.C.

Rule 62-762.711(1), F.A.C., states that all records shall be dated, maintained in permanent form, and available for inspection by the Department or County. If records are not kept at the facility, they shall be made available at the facility or another agreed upon location upon five working days notice. Site access to the facility shall be provided for compliance inspections conducted at reasonable times.

Rule 62-762.711(2), F.A.C., states that records of the following are required to be kept for two years: (a) Measurements and reconciliations of inventory, as applicable; (b) Repair, operation, and maintenance records; (c) Release detection results, including electronic test results, regardless of the frequency, and monthly visual inspections performed in accordance with paragraph 62-761.640(2)(e), F.A.C. The presence of a regulated substance's odor, sheen, or free product shall be recorded for each sampling event; (d) Release detection response level descriptions; (e) A copy of all test data and

results gathered during tightness tests, pressure tests, and breach of integrity tests, and the name and type of the test approved under Rule 62-761.850, F.A.C.; (f) Certification of Financial Responsibility on Form 62-761.900(3); (g) Records of types of fuels stored per tank; and (h) The repair or replacement of gaskets, valve packings, valves, flanges, and connection/disconnection fittings for bulk product piping if the repair or replacement is performed in response to a discharge or loss of regulated substances.

The activities observed during the field inspection and any other activities at your facility that may be contributing to violations of the above-described statutes or rules should be ceased. The operation of a facility in violation of state statutes or rules may result in the judicial imposition of civil penalties of up to \$10,000 per violation per day pursuant to Section 403.141 and 403.161, F.S.

PLEASE BE ADVISED that you must contact Lindsay Brock prior to August 11, 2010 to discuss the issues raised in this Warning Letter. Please contact Lindsay Brock via email at Lindsay.Brock@dep.state.fl.us or at (813) 632-7600, ext. 472. Upon contact, if required, a meeting will be scheduled at the Southwest District Office of the Department of Environmental Protection located at 13051 North Telecom Parkway, Temple Terrace, Florida. The Department is interested in reviewing any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

PLEASE BE ADVISED that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with section 120.57(5), F.S. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,



Deborah A. Getzoff
District Director
Southwest District

DAG/LLB

ec: Sonya Ostensen, Citrus County Health Department



Florida Department of Environmental Protection

Southwest District
13051 North Telecom Parkway
Temple Terrace, Florida 33637-0926
Telephone: 813-632-7600

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard, Jr.
Secretary

June 14, 2011

CERTIFIED MAIL: 7009 1680 0001 0454 8146
RETURN RECEIPT REQUESTED

Sumter County Board of County Commissioners
Attn.: Donald Burgess, Chairman
c/o Douglas Conway, Facilities Development & Maintenance, Project Manager
910 N. Main Street
Bushnell, FL 33513



**Subject: Short Form Consent Order
Proposed Settlement of Sumter County Jail
Bushnell, Sumter County, Florida
FDEP ID# 60/9811789
OGC File No. 11-0860**

Dear Mr. Burgess:

The purpose of this letter is to complete the resolution of the matter previously identified by the Department in the Warning Letter, dated July 22, 2010, a copy of which is attached. The corrective actions required to bring the facility into compliance have been performed. The Department finds that you are in violation of the rules and statutes cited below. In order to resolve these matters, you are assessed civil penalties in the amount of \$2,800.00, along with \$250.00 to reimburse the Department costs, for a total of \$3,050.00.

The civil penalty is apportioned as follows: \$800.00 for violation of Rule 62-762.401(1)(a)-(b), Florida Administrative Code (F.A.C.), Rule 62-762.401(2)(a)1-5, F.A.C., Rule 62-762.401(2)(a)6, F.A.C., Rule 62-762.451(1)(a)1, F.A.C., and Rule 62-762.451(1)(a)3, F.A.C.; \$2,000.00 for violation of Rule 62-762.601(1)(a)2, F.A.C., Rule 62-762.601(1)(c), F.A.C., Rule 62-762.601(1)(d), F.A.C., Rule 62-762.601(1)(e), F.A.C., and Rule 62-762.601(1)(h), F.A.C.

The Department acknowledges that the payment of these civil penalties by you does not constitute an admission of liability. This payment must be made payable to the Department of Environmental Protection by cashier's checks or money orders and shall include the OGC File Number 11-0860, assigned above, and the notation "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, Southwest District, 13051 N. Telecom Parkway, Temple Terrace, FL, 33637. The payment shall be due within 30 days of your signing this letter.

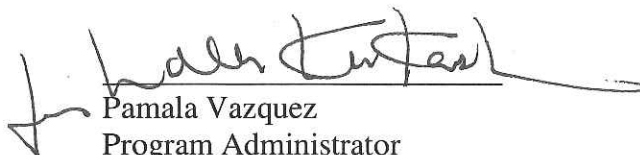
Your signing this letter constitutes your acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action.

Copy to
Commiss _____
Co Atty _____
Co Fin _____
Other _____
Pub Affs Div _____
Bldg & Dev Div _____
Admin Div _____
Com Svcs Div _____

of the Department, which shall be enforceable pursuant to Sections 120.69 and 403.121, Florida Statutes.

If you do not sign and return this letter to the Department at the District address by July 12, 2011, the Department will assume that you are not interested in settling this matter on the above described terms, and will proceed accordingly. None of your rights or substantial interests will be determined by this letter, unless you sign it and it is filed with the Department Clerk.

Sincerely,


Pamala Vazquez
Program Administrator
Southwest District

FOR THE RESPONDENTS:

I, Donald Burgess, Chairman, Sumter County Board of County Commissioners, **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____

Date: _____

.....
FOR DEPARTMENT USE ONLY

DONE AND ENTERED this _____ day of _____, 2011.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Pamala Vazquez
Program Administrator
Southwest District

FILING AND ACKNOWLEDGMENT

Filed, on this date,
pursuant to Section 120.52, F.S.,
with the designated Department Clerk,
receipt of which is hereby acknowledged.

Clerk

Date

Copies furnished to: Office of General Counsel, Florida DEP
Sonya Ostensen, Citrus County Health Department, *via email*

NOTICE OF RIGHTS

Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; (c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order; (d) A statement of when and how the petitioner received notice of the Consent Order; (e) A statement of all material facts disputed by petitioner, if any; (f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order; (g) A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent Order; and (h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

PENALTY COMPUTATION WORKSHEET

This penalty computation worksheet is the Department's settlement offer.

Violator's Name: Sumter County

Facility Name: Sumter County Jail

Facility ID No: 60/9811789

Department Staff Responsible for the Penalty Computation: Lindsay L. Brock

Date: 06/9/2011

Part I - ELRA Penalty Determination

	Violation Type	ELRA Schedule	ELRA Penalty	Adjustments	Penalty
1	The 850-gallon Aboveground Storage Tank (AST) was not registered from the time of installation on June 24, 2009 to January 8, 2010 and fees were not paid. The 1,000-gallon AST was not registered from the time of installation on February 17, 2009 to January 8, 2010 and fees were not paid. Rule 62-762.401(1)(a)-(b), F.A.C., Rule 62-762.401(2)(a)1-5, F.A.C. and Rule 62-762.401(2)(a)6, F.A.C.	403.121(4)(e), F.S.	\$1,000.00	-\$200.00	\$800.00
2	Release detection inspections, including visual and electronic monitoring of the AST's secondary containment, were not performed and documented properly on a monthly basis from the time of installation of the 850-gallon AST on June 24, 2009 to March 29, 2010. Release detection inspections, both visual and electronic monitoring of the AST's secondary containment, were not performed and properly documented on a monthly basis from the time of installation of the 1,000-gallon AST on February 17, 2009 to October 2, 2009. Rule 62-762.601(1)(d), F.A.C., Rule 62-762.601(1)(e), F.A.C., and Rule 62-762.601(1)(h), F.A.C.	403.121(3)(g), F.S.	\$2,000.00		\$2,000.00
3	The initial operability test of the 850-gallon AST rupture basin sensor and monitoring panel was not performed until March 29, 2010. Rule 62-762.601(1)(a)2, F.A.C. and Rule 62-762.601(1)(c), F.A.C.	403.121(3)(g), F.S.	\$2,000.00	-\$2,000.00	\$0
4	Notification was not provided 30 days and 48 hours prior to when the ASTs were installed. Rule 62-762.451(1)(a)1, F.A.C., and Rule 62-762.451(1)(a)3, F.A.C.	403.121(4)(e), F.S.	\$1,000.00	-\$1,000.00	\$0
5	Records requiring a two-year documentation period, including monthly release detection records, a registration placard and a Certificate of Financial Responsibility were not kept by facility and not submitted within five days notice. Rule 62-762.711(1), F.A.C. and Rule 62-762.711(2), F.A.C.	403.121(4)(f), F.S.	\$500.00	-\$500.00	\$0

Total Penalties for all Violations

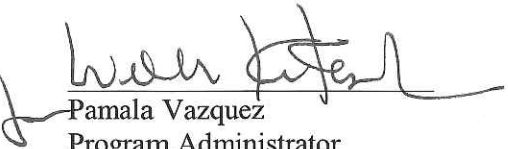
\$ 2,800.00

Costs and Expenses

\$ 250.00

Total Penalties and Costs

\$ 3,050.00


Pamala Vazquez
Program Administrator
Southwest District

6/14/11
Date

Part II – Penalty Adjustments

	Violation Type	Justification for Adjustment	Dollar Amount
1	The 850-gallon Aboveground Storage Tank (AST) was not registered from the time of installation on June 24, 2009 to January 8, 2010 and fees were not paid. The 1,000-gallon AST was not registered from the time of installation on February 17, 2009 to January 8, 2010 and fees were not paid.	The facility is registered and a placard has been issued; A 20% good faith reduction has been provided.	-\$200.00
2	Release detection inspections, including visual and electronic monitoring of the AST's secondary containment, were not performed and documented properly on a monthly basis from the time of installation of the 850-gallon AST on June 24, 2009 to March 29, 2010. Release detection inspections, both visual and electronic monitoring of the AST's secondary containment, were not performed and properly documented on a monthly basis from the time of installation of the 1,000-gallon AST on February 17, 2009 to October 2, 2009.	No adjustment.	-\$0.00
3	The initial operability test of the 850-gallon AST rupture basin sensor and monitoring panel was not performed until March 29, 2010.	The 2010 operability test has been provided to the Department and is in compliance; therefore, violations #2 & #3 have been combined as a good faith reduction.	-\$2,000.00
4	Notification was not provided 30 days and 48 hours prior to when the ASTs were installed.	Violations #1 & #4 have been combined as a good faith reduction.	-\$1,000.00
5	Records requiring a two-year documentation period, including monthly release detection records, a registration placard and a Certificate of Financial Responsibility were not kept by facility and not submitted within five days notice.	A penalty will not be assessed for this violation as the records did not exist and the penalty is redundant. Facility currently has all required documentation.	-\$500.00